



ATTORNEYS AT LAW

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August 17, 2009

By ECF Filing

Magistrate Judge A. Kathleen Tomlinson
United States District Court – Eastern District New York
100 Federal Plaza, Courtroom 910
Central Islip, New York 11722-9014

Re: Peter Capone, et al. v. Mark Goldman, et al. 09 Civ. 1208(SJF)

Dear Mag. Judge Tomlinson:

My firm represents the plaintiffs in this action. In accordance with the Case Management and Scheduling Order, dated July 10, 2009, I am submitting below, for endorsement, a proposed ESI agreement:

1. The parties shall make all reasonable efforts to assist plaintiff's efforts to obtain a copy of electronically stored information ("ESI") concerning Goldan, LLC ("Goldan") which is now believed to be in the possession of the Trustee in the bankruptcy, In re Goldan, LLC, Case. No. 09-70955-REG (E.D.N.Y.). Plaintiffs shall seek an index, of the ESI already provided to the Trustee, including the storage medium for the data, whether there are images of any computer hardware, such as hard drives, PDAs, or backup tapes, as well information about the software applications for which data was provided to the Trustee.
2. Plaintiffs are seeking from the Trustee complete disclosure of the ESI in its possession concerning Goldan. These disclosures shall include information about: (i) the types of computer hardware and software used by Goldan; (ii) the versions of any software; (iii) operating systems used; (iv) location of and manner of use any servers to store information; (v) the identity of any third parties who maintain or have access to Goldan's ESI; (vi) the identity of the individuals most knowledgeable about how Goldan stored and accessed ESI; and (vii) information about any systems used to create archive or backup systems, including but not limited to the technical specifications of the system and any software it uses, the frequency by which backup or archives were created and the retention policy for them.

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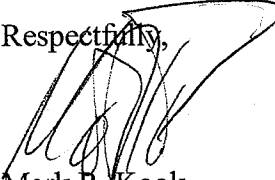
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3. After obtaining these disclosures, the parties shall seek for deposition the individual most knowledgeable about the ESI to answer additional questions, in order to clarify the disclosures made by defendants.
4. The parties reserve the right to take a 30(b)(6) deposition of the individual most knowledgeable about the subject's systems and procedures concerning ESI.
5. Each party agrees to continue to preserve any ESI that might be in its possession pending the resolution of this case, and to produce such as might be required in response to any discovery requested by any other party.

Jeffrey Daniels, Esq. has consented to the proposed ESI agreement. I have not received any comments from Fred Kantrow, Esq., counsel for defendants Andrea Goldman and Goldman and Goldman.

Thank you.

Respectfully,



Mark R. Kook

cc: Jeffrey C. Daniels, Esq.(by e-mail)
Fred S. Kantrow, Esq.(by e-mail)